

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

INDIGO WILLIAMS, *ET AL.*

PLAINTIFFS

V.

CAUSE NO. 3:17-cv-404-WHB-LRA

PHIL BRYANT, *ET AL.*

DEFENDANTS

**PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT OR, IN
THE ALTERNATIVE, FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Pursuant to Rule 59 of the Federal Rules of Civil Procedure, the Plaintiffs move the Court to alter, amend, or vacate its Final Judgment [Docket No. 32] because it suffers from two clear errors of law.

First, the Plaintiffs' claims are not barred by the Eleventh Amendment. The Complaint requested prospective declaratory relief against an ongoing violation of federal law. The Eleventh Amendment's *Ex parte Young* exception permits such claims. *Aguilar v. Texas Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998) ("To meet the *Ex Parte Young* exception, a plaintiff's suit alleging a violation of federal law must be brought against individual persons in their official capacities as agents of the state, and the relief sought must be declaratory *or* injunctive in nature and prospective in effect.") (emphasis added).

Second, even if the Eleventh Amendment applied, dismissal should have been without prejudice. *Warnock v. Pecos Cty., Texas*, 88 F.3d 341, 343 (5th Cir. 1996) ("Because sovereign immunity deprives the court of jurisdiction, the claims barred by sovereign immunity can be dismissed only under Rule 12(b)(1) and not with prejudice."). If the dismissal is altered to a dismissal without prejudice, and if the Court

still believes that the Complaint seeks retrospective (rather than prospective) relief, then the Court should grant leave to amend the Complaint so that any pleading defects can be cured. *See Hitt v. City of Pasadena*, 561 F.2d 606, 609 (5th Cir. 1977) (granting leave to cure jurisdictional pleading defect). The Proposed First Amended Complaint is attached hereto as Exhibit A.

Accordingly, the Plaintiffs move the Court to vacate the Final Judgment and to deny the State Defendants' Motion to Dismiss [Docket No. 23]. Alternatively, the Plaintiffs move the Court to alter the portion of the Final Judgment dismissing the Complaint with prejudice and grant the Plaintiffs leave to file an amended complaint that cures any pleading defects.

RESPECTFULLY SUBMITTED this Eleventh day of April 2018.

/s/ Will Bardwell
Will Bardwell
Counsel for the Plaintiffs

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CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, simultaneous with this Motion's filing, I have served true and correct copies of the same on all counsel of record via the Court's electronic filing system.

SO CERTIFIED this Eleventh day of April 2018.

/s/ Will Bardwell
Will Bardwell
Counsel for the Plaintiffs